



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 8159-95

11 June 1999

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: [REDACTED] USNR, [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

- Encl:
- (1) DD Form 149 dtd 2 Oct 95 w/attachments
  - (2) Inspector-Instructor, 6th MTBn, Red Bank  
first end 5800 I-I dtd 16 Dec 93
  - (3) Pers-322 memo dtd 11 Mar 96
  - (4) Pers-61A memo dtd 22 Apr 96
  - (5) Subject's ltr dtd 7 Jun 96 w/encls
  - (6) Memo for record dtd 2 Feb 99
  - (7) Subject's ltr dtd 1 Mar 99 w/encls
  - (8) Memo for record dtd 17 Mar 99
  - (9) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the enlisted performance evaluation report for 1 April 1993 to 26 January 1994. A copy of this report is at Tab A to enclosure (1).

2. The Board, consisting of Messrs. Hogue, Schultz, and Tew, reviewed Petitioner's allegations of error and injustice on 17 March 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner received the contested evaluation for service in her current rate, hospitalman second class (pay grade E-5), from the Naval Reserve Center (NRC), Perth Amboy, New Jersey. Her reporting senior and commanding officer was a Commander (CDR) S... The evaluation was submitted on the occasion of her transfer to the Naval and Marine Corps Reserve Center (NMCRC), Lehigh Valley, Pennsylvania. She was given adverse marks of "2.0", the second lowest possible, in "personal behavior"; "2.6", the third lowest, in "military bearing" and "human relations including equal opportunity"; and "2.8", the fourth lowest, in "military knowledge/performance" and "reliability." She was marked "3.0", the sixth highest, in "rating knowledge/performance", "initiative", "directing", and "counseling"; and "3.8", the second highest, in "speaking ability." She received only one mark of "4.0", the highest possible, in "writing ability." Her "overall evaluation" was adverse, "2.8." She was compared with no other petty officers. In "advancement recommendation" she received the adverse mark of "not recommended." The comments section had some positive content, but also included the following:

...[Petitioner] has not been a competent sailor this reporting period. Her performance has been only marginally satisfactory. [Petitioner] has not demonstrated appropriate behavior when assigned tasks by seniors and has not observed the chain of command on several occasions. Specifically:

- [Petitioner] complains when assigned tasks by senior corpsmen arguing that they should be doing the same assignments that she was tasked with completing.
- Member not recommended for advancement due to lack of sufficient military knowledge. [Petitioner] has brought issues regarding the Medical Department to others beyond or outside the local chain of command, often bypassing the unit chain and Commanding Officer entirely.

[Petitioner] has not demonstrated knowledge of the technical aspects of her rate...

[Petitioner] is a well meaning [sic] corpsman, but lacks the maturity and self discipline of a Second Class Petty Officer. She has been counseled several times on her marginal performance. [Petitioner] still has yet to demonstrate the potential to improve...

**RETENTION: NOT RECOMMENDED.**

Petitioner marked this evaluation showing her desire to submit a rebuttal statement, and her application includes a copy of her rebuttal dated 15 July 1994 (with the contested evaluation at Tab A to enclosure (1)). However, no rebuttal appears in her official record.

d. Petitioner's evaluations before and after the contested adverse evaluation, including three previous evaluations from NRC, ~~and from other reporting seniors~~, are very competitive in nature.

e. According to Petitioner, during 1 April to 30 October 1993, Hospitalman First Class (HM1) (pay grade E-6) S... asked her to "go out" with him. She allegedly told him she was "not interested." She stated that during November 1993, HM1 S...again asked for a date, and she again told him she was "not interested" and to leave her alone. She said that the next day, HM1 S... counseled her for what he thought was a "problem"; and that when she told HM1 S... that she thought she was being counseled for "personal" reasons, the neutral witness who was present, First Sergeant (1st Sgt) (pay grade E-8) R..., stopped the counseling and ordered her to file a sexual harassment complaint against HM1 S... She stated that she did not want to file any charges against HM1 S...

f. The document at enclosure (2) from a Colonel S... reflects that on 16 December 1993, he held a hearing regarding Petitioner's sexual harassment complaint, and that the charges were dropped on a finding that "there is no basis to the allegation of sexual harassment made by [Petitioner] against HM1 S[...]." He stated his conclusions that the problem was "not one of sexual harassment but rather a personality and professional conflict between the two individuals" and that "The professional conflict centers around [Petitioner] not wanting to take direction from HM1 S[...]" He further stated that Petitioner was "counselled on the seriousness of making sexual harassment allegations and the proper way to bring allegations forward in the future if the need arises" and that "she is to receive further instruction in the DON [Department of the Navy] Policy on Sexual Harassment."

g. The letter of 11 October 1994 (Tab B to enclosure (1)) from the Commanding Officer, NMCRC, Lehigh Valley, the unit to which Petitioner was transferred after she received the contested evaluation, states Petitioner was "very upset" with her transfer evaluation; that she submitted a rebuttal on 15 July 1994; that NMCRC, Lehigh Valley sent the rebuttal to her previous reporting senior, CDR S..., in September 1994; but that they had received no response from him. The Commanding Officer, NMCRC, Lehigh Valley states that the comments section of Petitioner's evaluation at issue does not support the marks; that even though the sexual harassment complaint was dropped, her marks may have been lowered; and that Petitioner insisted she received no support from CDR S... after the sexual harassment charge was filed. The Commanding Officer, NMCRC, Lehigh Valley endorsed her application to this Board on 13 October 1995 (Tab C to enclosure (1)), stating as follows:

Forwarded recommending approval. Although the Officer [sic] implicated in this adverse evaluation case was asked to retire because of actions related to this incident, [Petitioner] still lives with this. Her career must not be jeopardized by a person that had unjustified personal problems with her performance.

h. In correspondence attached as enclosure (3), the Bureau of Naval Personnel Evaluation Branch (Pers-322) has commented to the effect that Petitioner's request should be denied. This advisory opinion includes the following:

...  
2...a. The report was properly prepared administratively.

b. The report provides an overall view of [Petitioner's] performance, giving specific comments on her achievements and potential.

c. Untimely referral of the report to [Petitioner] for signature and comment does not invalidate the report.

d. [Petitioner] includes a copy of her letter to the reporting senior which requests reconsideration of her evaluation report; however, a statement has not been received by Pers-322.

e. The marks and comments in the report represent the judgment and appraisal responsibility of the reporting senior for a specific period of time. It is not required to be consistent with previous or subsequent reports.

f. Even though [Petitioner] includes support from her present commanding officer, she does not prove the report to be unjust or in error...

i. In correspondence attached as enclosure (4), the Bureau of Naval Personnel Equal Opportunity Division (Pers-61A) accepted Petitioner's account of what transpired and commented to the effect that "Without further information addressing the significant decline in performance, it appears that [Petitioner] may have been the victim of reprisal." However, this advisory opinion stated that a recommendation concerning her request could not be made without more information, specifically, a statement from CDR S... and a copy of Petitioner's harassment complaint.

j. By letter at enclosure (5), Petitioner responded to the advisory opinions from Pers-322 and Pers-61A. She maintained that she was ordered by 1stSgt R... to file a sexual harassment complaint against HM1 S... against her wishes. She said that her leading petty officer told her that for the period in question, he had proposed an overall "4.0" evaluation, the highest possible, however, her reporting senior, CDR S..., had torn up this evaluation in front of him and her chief petty officer, stating he would prepare Petitioner's evaluation himself. She stated that she did not believe a copy of the complaint she had filed was still in existence, because this type of document may be destroyed after two years. She argued that the narrative of the evaluation at issue does not support the low marks. She said that she contacted her reporting senior, CDR S..., and asked that he reconsider her evaluation,

however, he never responded. She stated that she was selected as Sailor of the Quarter during the reporting period in question. She concluded by asserting she never received any type of counseling from CDR S...

k. The memorandum for the record at enclosure (6) shows the former case examiner had two telephone conversations with Petitioner's reporting senior regarding the contested evaluation. This memorandum for the record includes the following:

...  
[The former case examiner] contacted CDR S[...] in Jun[e] and Jul[y] 1996 and on both occasions he stated that there was absolutely no truth to the sexual harassment charges. He stated that he believes Pet[itioner] fabricated the charge because she was dissatisfied with the adverse eval[uation]. He felt he assigned Pet[itioner] trait marks she deserved, and stated that he would forward a statement to that effect. I never heard anything further from CDR S[...] He is a reserve officer; therefore, not easy to locate...

CDR S... has never submitted a statement, as the former case examiner's memorandum for the record indicates he said he would.

j. By letter at enclosure (7), Petitioner replied to the memorandum for the record from the former case examiner. She stated she filed the sexual harassment charge in November 1993, before the contested evaluation was submitted on 12 February 1994 [enclosure (2), the document reporting the resolution of her complaint, is dated 16 December 1993, before the submission date]. In this letter, she specifically alleged that her reporting senior "did in fact solely base [her] evaluation on reprisal because of the sexual harassment complaint." She asserted that when she told him about her sexual harassment complaint, he became "very angry" and yelled at her, saying she "better not be fabricating this because there will be hell to pay for [sic]."

l. The memorandum for the record at enclosure (8) reflects the current case examiner verified that Petitioner had never filed a "whistleblower" complaint with the Department of Defense Inspector General.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (3), the Board finds the existence of an injustice warranting the requested relief.

The Board particularly notes that the contested adverse evaluation is aberrant, in that Petitioner has a very competitive service record before and after. They also find that the negative comments in the evaluation at issue are vague. They are disturbed that when a copy of Petitioner's rebuttal was sent to her reporting senior, he did not respond, nor did he provide the statement he told the former case examiner he would. They seriously question

the reporting senior's credibility in light of his statement that Petitioner's sexual harassment complaint was filed in retaliation for the evaluation in question, when it is clear that her complaint actually was filed and resolved before the report at issue was submitted. Finally, they find that the evaluation might well have been in reprisal for her sexual harassment complaint, which she states she was ordered to submit. In this regard, they particularly note the evaluation comment that Petitioner "has brought issues regarding the Medical Department to others beyond or outside the local chain of command, often bypassing the unit chain and Commanding Officer entirely"; her assertion that her reporting senior expressed anger about her having filed the complaint, allegedly stating "she better not be fabricating this because there will be hell to pay for [sic]"; and the ultimate determination, before the evaluation was submitted, that the complaint had been without basis.

In view of the above, the Board recommends the following corrective action.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period From	of Report To
12Feb94	<del>XXXXXXXXXXXX</del> NR	1Apr93	26Jan94

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That Petitioner's Enlisted Performance Record (Page 9) be corrected accordingly.

d. That appropriate corrections be made to the magnetic tape or microfilm maintained by the Navy Personnel Command.

e. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

*W. Dean Pfeiffer*  
W. DEAN PFEIFFER

Reviewed and approved:

AUG 6 1999

*Karen S. Heath*

KAREN S. HEATH  
Principal Deputy Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)



DEPARTMENT OF THE NAVY  
BUREAU OF NAVAL PERSONNEL  
WASHINGTON, D.C. 20370-5000

81.59-95

IN REPLY REFER TO  
1616  
Pers-322/ 0181  
MAR 11 1996

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS

Via: BUPERS/BCNR Coordinator (Pers-00XCB)

Subj: HM2 [REDACTED] USNR, [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned. We recommend denial of the member's petition.

2. These comments concern the member's request for removal of her performance report for the period of 1 April 1993 to 24 January 1994.

a. The report was properly prepared administratively.

b. The report provides an overall view of the member's performance, giving specific comments on her achievements and potential.

c. Untimely referral of the report to the member for signature and comment does not invalidate the report.

d. The member includes a copy of her letter to the reporting senior which requests reconsideration of her evaluation report; however, a statement has not been received by Pers-322.

e. The marks and comments in the report represent the judgment and appraisal responsibility of the reporting senior for a specific period of time. It is not required to be consistent with previous or subsequent reports.

f. Even though the member includes support from her present commanding officer, she does not prove the report to be unjust or in error.

3. We recommend retention of the report.

4. We recommend comments be obtained from the Head, Sexual Harassment Branch, Pers-613, regarding the member's allegation of sexual harassment.

[REDACTED]  
Asst. Head, Evaluation Branch





DEPARTMENT OF THE NAVY  
BUREAU OF NAVAL PERSONNEL  
WASHINGTON, D.C. 20370-5000

8159-95

IN REPLY REFER TO

5354

Pers-61A

APR 22 1996

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters (Pers-00XCB)

Subj: ~~XXXXXXXXXXXXXXXXXXXX~~ AN, USNR ~~XXXXXXXXXXXX~~

Encl: (1) BCNR File 08159-95 w/Microfiche Service Record  
(2) BUPERS memo 1616 Pers-322/0181 OF 11 Mar 96

1. ~~XXXXXXXXXXXX~~ has petitioned the Board for Correction of Naval Records (BCNR) to remove her performance evaluation for the period covering 1 Apr 93 to 26 Jan 94 while stationed at 4FSSG 4MB SSB MSE3B. ~~XXXXXXXXXXXX~~ alleges that this performance evaluation does not fairly reflect her performance because she was reprimanded by her chain of command for a sexual harassment complaint she filed in November 1993.

2. ~~XXXXXXXXXXXX~~ reported to the Naval Reserve 4FSSG 4MB SSB MSE3B 1 August 1992. Her reporting senior was ~~XXXXXXXXXXXX~~. Up until the evaluation in question, her performance was excellent. She has been regarded as a take charge individual who uses her personal time to attend to unit needs. As a field corpsman in support of the Marine Corps Reserve, she received a Meritorious Mast from the Officer in Charge, 6th Motor Transport Battalion, Red Bank, for excellent devotion and duty as the Corpsman in charge during August of 1993. In November of 1993, while drilling at AFRC Redbank, ~~XXXXXXXXXXXX~~ was asked on a date by HM1 ~~XXXXXXXXXXXX~~ an active duty I & I Corpsman. This was his second request; ~~XXXXXXXXXXXX~~ refused, and asked that he leave her alone. Shortly after this incident, ~~XXXXXXXXXXXX~~ counseled her on what he thought was a problem. She thought the counseling session was personal, and the counseling witness, 1ST ~~XXXXXXXXXXXX~~ her, stopped the counseling and ordered ~~XXXXXXXXXXXX~~ to file sexual harassment charges. In December 1993, HM2 Gorman was instructed not to drill at ~~AFRC Redbank~~ so that contact with HM1 Sandoval could be avoided. A hearing by ~~Colonel Sandoval~~ and ~~XXXXXXXXXXXX~~ on the sexual harassment charges resulted in the charges being dropped due to lack of evidence and the case was closed. The Commanding

Subj: HM2 [REDACTED] USNR [REDACTED]

Officer, Naval & Marine Corps Reserve Center, Lehigh Valley, has requested a copy of the complaint and a statement from [REDACTED]

3. The drastic decline in [REDACTED]'s evaluation marks are not fully supported by the evaluation comments. Without further information addressing the significant decline in performance, it appears that [REDACTED] may have been a victim of reprisal. A statement from [REDACTED] and a copy of the harassment complaint is required in order to make a determination if the evaluation was indeed a result of reprisal. Pers-61 can not make a recommendation concerning the petitioner's request without more information.

4. Pers-61 point of contact is LT R [REDACTED] 641.

[REDACTED]  
Captain, U.S. Navy  
Director, Equal Opportunity  
Division (Pers-61)

2 FEB 99

MEMO FOR THE RECORD

[REDACTED] IS REQUESTING REMOVAL OF AN ADVERSE PERF EVAL FOR 1 APR 93 TO 26 JAN 94. SHE ALLEGES THAT THE RS [REDACTED] LOWERED TRAIT MARKS DUE TO AN ALLEGED SEXUAL HARASSMENT CHARGE SHE FILED AGAINST A 1ST CLASS [REDACTED] IN HER UNIT, AND NOT HER ACTUAL PERFORMANCE.

IN DEC 93 , PET'S OIC HELD A HEARING IRT THE SEXUAL HARASSMENT CHARGES. CHARGES WERE DROPPED DUE TO LACK OF EVIDENCE AND THE CASE WAS CLOSED.

SINCE THERE WAS NO RESPONSE FROM THE RS IRT THE REBUTTAL STMT PET SUBMITTED TO THE ADVERSE EVAL, ATTEMPT WAS MADE TO LOCATE THE RS FOR A STMT REGARDING THE LOW TRAIT MARKS AND THE SEXUAL HARASSMENT CHARGES.

I CONTACTED [REDACTED] IN JUN AND JUL 1996 AND ON BOTH OCCASIONS HE STATED THAT THERE WAS ABSOLUTELY NO TRUTH TO THE SEXUAL HARASSMENT CHARGES. HE STATED THAT HE BELIEVES PET FABRICATED THE CHARGE BECAUSE SHE WAS DISSATISFIED WITH THE ADVERSE EVAL. HE FELT HE ASSIGNED PET TRAIT MARKS SHE DESERVED, AND STATED THAT HE WOULD FORWARD A STATEMENT TO THAT EFFECT. I NEVER HEARD ANYTHING FURTHER FROM [REDACTED] HE IS A RESERVE OFFICER; THEREFORE, NOT EASY TO LOCATE.

  
CASE EXAMINER

**MEMORANDUM FOR THE RECORD**

**BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)  
PERFORMANCE SECTION**

**2 NAVY ANNEX, SUITE 2432**

**WASHINGTON, DC 20370-5100**

**TELEPHONE: DSN 224-9842 OR COMM (703) 614-9842**

**FAX: DSN 224-9857, COMM (703) 614-9857, OR (815) 328-0742**

**E-MAIL: GEORGE.BRIAN@HQ.NAVY.MIL**

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DATE: 17MAR99

DOCKET NO: 8159-95

PET: [REDACTED] USNR

PARTY CALLED: DODIG DEPARTMENTAL INQUIRIES/DODIG HOTLINE

TELEPHONE NO: (703) 604-8516/69

WHAT PARTY SAID: DODIG INFORMED ME THAT PET HAS NEVER FILED A  
"WHISTLEBLOWER" COMPLAINT RE ALLEGED INCIDENT IN HER CASE.

[REDACTED]  
[REDACTED]